

# **COST and CONTRACT ADMINISTRATION in CONSTRUCTION**

## **Divine Perspectives**

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## Chapter 8

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### Perception of Stakeholders in *Shari'ah* Compliant Construction Contract

Mohammed Hamzi Hassan, Nur Ayunni Azmin and  
Siti Nora Haryati Abdullah Habib

#### Introduction

The practice of construction contracts in Malaysia is governed by the Contracts Act 1950 (Act 136). For a contract that involves Government, it was governed by the Government Contracts Act 1949 (Act 120). The Malaysian construction industry relies essentially on a various types of standard form of contract in contracting; such as PWD Form (Revision 1/ 2010) for public projects; PAM 2006 Form, CIDB Form and IEM Form for private projects (Norazam, 2008). The construction industry players may use any of these standard forms of contract, or made some alteration to the existing standard form of contract according to the needs towards achieving the final product of the projects. Regardless of the types of forms of contract that have been used, the researcher found that not many research have been conducted to study on the current construction contract those commonly used in Malaysia, whether in compliance with the *Shari'ah* or otherwise.

*Shari'ah* is a complete code of life, which encompasses all dimensions and aspects of human life including moral, ethical, social and political codes of conduct at an individual and collective level of human being (Manzur & Osmani, 2011). The purpose of *Shari'ah* (*maqasid al-Shari'ah*) is to secure benefits or interests, prevent harm and protect the essential *masalih* (five basic human's right) which are religion, life, intellect, lineage and property (Gamal, 2010).

The components of *Shari'ah* can be divided into *Aqidah* (belief), *Akhlaq* (behaviour) and *Fiqh* (transaction) (Khairuddin, 2007). *Fiqh* was categorized into 4 parts, which are *al-ibadat* (worship or rituals), *al-muamalat* (commercial dealing), *al-munakahat* (marriage or family laws) and *al-jinayah* (criminal) (Muhammad Hadi, Nasrudin, & Mohd Nazri, n.d). The construction industry falls under *al-muamalat*, or commercial transactions. The construction industry involves contract of sale and purchase between a client (with consultant's facilitation) and a contractor to deliver the output at pre-determined time and specification. The clients always want the best output that meets their requirements, the consultants are to advice the client and the contractors who construct the facilities usually aim for high profit for every project they got.

The main difference between commercial transactions (*al-muamalat*) under *Shari'ah* as compared to conventional system is the ultimate objective of *Shari'ah*, which is beyond making profits only. The main aim is to predicate on benefits to the individual and the community, and its laws are designed to protect these benefits and to facilitate the improvement and perfection of the conditions of human life (Mohammad Hashim, 2012). Generally, for commercial transaction in Islam, the sale for non-existence object, for example a building or structure that will be constructed later as commonly practised in construction industry is not allowed in *Shari'ah*. However, according to *Hanafi* school of *fiqh* who is one of the 4 *mazhab* (school of jurists) in Islam, *Istisna'* contract is exempted from some *fiqh* rules that apply to other contract sales due to special nature of economic and human basic needs. According to Zarqa' (1997), *Istisna'* is a contract that bind the purchaser and buyer in order to secure both parties to manufacture or construct a specified type of asset (non-existent asset) that will be delivered at future specified date at a predetermined selling price. Thus, the researcher believes that the *Shari'ah* compliant construction contract may be applied in construction industry although the final products do not exist at the time of contract entered by the construction industry players.

Few research have been conducted to discuss on the status of current construction contract whether it is in compliance with the *Shari'ah* or otherwise and at the same time many efforts are taken lately to promote *Shari'ah* compliance in current practice of construction procurement